



December 22, 2016

MEMORANDUM

To: School System Budget Review Committee
Howard County Council

From: Caryn D. Lasser
Director, Executive Services

Subject: Legal Services Analysis

The purpose of this memo is to provide information and an analysis regarding HCPSS legal services expenses. The Board of Education of Howard County (Board) transitioned from an in-house legal model to an expert services legal model. An expert services legal model allows the Board to direct legal matters to counsel with the strongest subject matter expertise. The prior model employed in-house counsel who provided legal advice, along with heavy reliance on outside counsel. However, most matters were handled by in-house counsel who could not provide the level of expertise in legal matters as outside counsel who specialize in individual areas. As the Board evaluates each annual Superintendent's Proposed Operating Budget, it provides an opportunity to analyze the results of the change to an expert legal model.

HCPSS Cost of Legal Services

The table below analyzes six years of actual legal costs from FY 2011 through FY 2016 along with the FY 2017 approved budget. Costs under the in-house legal model include salaries, benefits, and supply costs related to in-house staff as well as legal fees paid to external counsel. These costs were accounted for in a number of different programs. Under the expert legal model, all costs are legal fees paid to outside counsel.

The transition to an expert legal services model has not increased legal fees as a percentage of the operating budget. In fact, overall costs have decreased.

Howard County Public School System							
Legal Services Expenditures							
	In-house Legal Model			Expert Legal Model			
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
In-house Legal Counsel	\$ 429,085	\$ 434,139	\$ 183,018	\$ -	\$ -	\$ -	\$ -
Expert Legal Counsel	235,609	295,641	435,947	843,187	776,419	554,031	695,514
Total Legal Costs	\$ 664,694	\$ 729,779	\$ 618,965	\$ 843,187	\$ 776,419	\$ 554,031	\$ 695,514
Cost as a % of our operating budget	0.10%	0.11%	0.09%	0.12%	0.10%	0.07%	0.09%

Enrollment (FY11-FY12 include PreK)	50,993	51,419	50,969	51,681	52,511	53,637	55,638
Cost as a % of enrollment	0.03%	0.03%	0.02%	0.03%	0.03%	0.02%	0.02%

Total actual legal costs increased from FY 2011 to FY 2012, decreased for FY 2013, and then increased for FY 2014. From FY 2014 to FY 2016, total legal costs have decreased, with a notable decrease in FY 2016. The approved FY 2017 budget was based on FY 2015 actual costs and year end costs may be below the amount budgeted. It is important to note, as a proportion of the operating budget, annual legal fees have remained constant at 0.1 percent of the total operating budget before and after the transition to the expert legal services model. Similarly, as enrollment has grown, the cost of legal fees has not increased, rather again, remained level around 0.02 percent.

The total amount of legal fees budgeted is based on actual costs and anticipated costs using historical activity and available year-to-date data. In FY 2011 and FY 2012, under the in-house legal model, between 35 to 40 percent of legal expenses were devoted to expert legal services, almost \$300,000 in FY 2012, with total expenses of \$664,694 and \$729,779, respectively. In FY 2013, the HCPSS transitioned from an in-house legal model to an expert services legal model and realized immediate cost savings as total legal costs decreased to \$618,965. FY 2014 was the first year HCPSS was exclusively under the expert services model. That year HCPSS experienced the highest amount of legal fees at \$843,187 (still at 0.1 percent of the total operating budget), with approximately 38 percent of FY 2014 legal expenses for special education legal services, the majority to defend nonpublic placement challenges.

In FY 2015, all contracted legal services were transferred from the Board of Education (Program 0101) and Nonpublic Community Intervention (Program 3328) budget programs to Legal Services (Program 0104). The FY 2015 actual expenses for legal services declined to \$776,419. FY 2015 special education legal services dropped to approximately 29 percent of total FY 2015 legal services expenses.

In FY 2016, total actual expenses for legal services decreased by 30 percent from FY 2015 to \$554,031, with special education non-public placement expenses reduced to \$75,163, or 14 percent of the total legal services budget. Based on the data available when the FY2017 budget request was made, it was anticipated that expenses would increase over FY2016 and \$695,514 was approved for the FY2017 budget.

HCPSS Legal Costs Comparison

Many factors influence legal costs incurred by a school system which makes benchmarking this area challenging. Nonetheless, it can be helpful to compare legal costs with neighboring school systems. A comparison of the FY 2015, FY 2016 and FY 2017 legal costs of neighboring districts (Montgomery, Anne Arundel, Baltimore, and Prince George's counties) to HCPSS highlights some commonalities. As the five largest school districts in Maryland, they are all growing school districts located in the Baltimore-Washington metro area that are projecting increasing budgets for legal fees in line with increasing operating budgets. The legal fees for HCPSS, viewed in this light, appear to be reasonable.

Howard County Public School System Legal Services Cost Comparison*			
	Actual FY 2015	Actual FY 2016	Approved Budget FY 2017
HCPSS	\$776,419	\$554,031	\$695,514
MCPS	\$851,782	\$1,239,050	\$1,679,020
AACPS	\$866,659	\$950,695	\$1,036,658
BCPS	\$978,719	\$1,081,383	\$1,082,007
PGCPS	\$2,769,634	\$3,673,835	\$3,327,965

**Costs taken from FY 2017 budgets books*

Legal expenses are categorized and reported to the Board of Education monthly. These categories, with common examples noted, are the following:

- Board Operations: legal guidance and interpretations provided for board governance
- Collective bargaining: negotiations, grievances, arbitration hearings
- Ethics Panel: legal services supporting ethics panel cases
- Facilities: use of facilities, construction, capital projects
- General Counsel: general legal guidance not related to a particular case
- Hearing Examiner: legal services supporting hearing examiner cases
- Maryland Public Information Act (MPIA): MPIA disclosures, exemptions
- Miscellaneous: services not generally contained in another category

- Personnel: employee appeals, Equal Employment Opportunity (EEOC) complaints, Office of Civil Rights (OCR) complaints, Maryland Commission on Civil Rights (MCCR) complaints
- Policy: development, implementation, interpretations (includes regulations)
- Procurement: contracts, bids, partnership agreements
- Special Education: special education and nonpublic placement challenges
- Student: appeals, disciplinary action, litigation, OCR complaints

(Board Operations, Ethics Panel, Hearing Examiner categories added FY 2017; expenses previously included in General, Policy, Personnel, and other categories)

Howard County Public School System Analysis of Types of Legal Fees										
Category	FY 2013		FY 2014		FY 2015		FY 2016		FY 2017 YTD (OCT)	
Special Education	\$ 165,148	26.7%	\$ 326,628	38.7%	\$ 221,921	28.6%	75,163	13.6%	\$ 81,141	27.2%
Collective Bargaining	21,866	3.5%	35,516	4.2%	42,412	5.5%	6,733	1.2%	-	-
Facilities	14,144	2.3%	2,248	0.3%	3,939	0.5%	46,714	8.4%	20,839	7.0%
General Counsel	24,259	3.9%	56,703	6.7%	62,626	8.1%	78,819	14.2%	3,278	1.1%
MD Public Info Act (MPIA)	12,523	2.0%	9,310	1.1%	6,106	0.8%	51,330	9.3%	14,506	4.9%
Misc	35,138	5.7%	39,552	4.7%	27,079	3.5%	19,930	3.6%	861	0.3%
Personnel	133,048	21.5%	158,011	18.7%	168,310	21.7%	110,107	19.9%	38,462	12.9%
Policy	46,806	7.6%	32,550	3.9%	23,563	3.0%	27,641	5.0%	9,131	3.1%
Procurement	26,952	4.4%	33,804	4.0%	64,566	8.3%	32,792	5.9%	58,518	19.6%
Student	139,080	22.5%	127,828	15.2%	96,615	12.4%	98,553	17.8%	36,692	12.3%
Legal Services Assoc	-	-	20,800	2.5%	21,025	2.7%	6,250	1.1%	-	-
Filing Fees	-	-	236	0.0%	30,348	3.9%	-	-	3,151	1.1%
Other	-	-	-	-	7,909	1.0%	-	-	-	-
Board Operations	-	-	-	-	-	-	-	-	10,789	3.6%
Ethics Panel	-	-	-	-	-	-	-	-	20,839	7.0%
Hearing Examiner	-	-	-	-	-	-	-	-	-	-
Total Legal Fees	\$ 618,965	100.0%	\$ 843,187	100.0%	\$ 776,419	100.0%	\$ 554,031	100.0%	\$ 298,206	100.0%

Requests for legal services are initiated by the HCPSS to ensure compliance with laws, regulations, and policies. Typical requests initiated by the HCPSS fall into the categories of policy, procurement, facilities, and general counsel. Legal services are frequently necessary in response to issues and concerns brought to the HCPSS from our staff, students, parents, and community. The categories of Maryland Public Information Act (MPIA), student, personnel, and collective bargaining represent examples of the types of legal matters where the HCPSS seeks legal guidance and services in response to matters initiated by stakeholders. HCPSS legal services are also reported as to whether the cases regard special education matters. Special education cases are typically initiated by parents who question or challenge the HCPSS determination that necessary and appropriate services can be provided by the HCPSS rather than through a nonpublic placement.

Expert Legal Model Value

The value of the expert legal model is that HCPSS receives the best legal advice for the various types of matters that arise. Expert legal advice in the area of contracts ensures the Board enters into contracts with terms that protect the Board. In the areas of personnel, student appeals, and general counsel matters, it ensures the Board receives the best advice. In the area of special education in particular, with the assistance of expert legal services, the school system is able to ensure it places students appropriately. The HCPSS is committed to ensuring each student is provided with an appropriate education that will lead to their success and makes decisions regarding placement with that priority in mind.

Under the in-house legal model, nonpublic placement requests were often granted without adequate legal review despite special educator and classroom teacher recommendations for local services. Under the expert legal model, each request is evaluated carefully with heavy emphasis on teacher input to determine whether the HCPSS can provide the services. HCPSS approves all requests of nonpublic placement if it is determined that the nonpublic placement is appropriate. However, if HCPSS has the capability to provide the services and these evaluations are challenged, then legal costs are incurred to defend the HCPSS determination that services can be provided in district. MSDE has upheld all HCPSS determinations that free and appropriate

services can be delivered in district, rather than in a nonpublic placement.

Ensuring students are placed appropriately has a cost impact as nonpublic placements cost three times more per year, on average, than placement in an HCPSS school. Under the expert legal model, the taxpayers of Howard County are saving significantly more through avoided costs than under the in-house model. Savings through avoided costs are more than three times higher than the legal costs for the entire school system. HCPSS has a fiduciary responsibility to Howard County citizens to be good stewards of their money and to responsibly place all students where they can achieve success. All challenges to the state level since employing the expert legal services model have confirmed HCPSS placement determinations that the district can provide free and appropriate services.

Howard County Public School System Special Education Projected Cost Savings									
	In-house Legal Model				Expert Legal Model				
	FY 2012		FY 2013		FY 2014		FY 2015		
	Total Projected Savings*		Total Projected Savings*		Total Projected Savings*		Total Projected Savings*		
	1 Yr Saving		1 Yr Saving		1 Yr Saving		1 Yr Saving		
Tuition	\$ 109,432	\$ 552,800	\$ 203,214	\$ 976,533	\$ 264,825	\$ 2,592,869	\$ 421,640	\$ 2,227,793	
Transport	53,542	285,558	53,542	321,252	89,237	1,017,299	71,389	660,352	
Cost “savings”	\$ 162,974	\$ 838,358	\$ 256,756	\$ 1,297,785	\$ 354,061	\$ 3,610,168	\$ 493,029	\$ 2,888,145	
Total Legal Costs	\$ 729,779		\$ 618,965		\$ 843,187		\$ 776,419		
* Total projected saving is inclusive of 1 year saving.									

The cost savings (costs avoided) are calculated based upon the assumptions that when a case was brought against HCPSS for a specific nonpublic placement and was resolved, tuition is saved until the student reaches 21 years of age. Only the HCPSS portion of the tuition costs are included in the total projected savings. Transportation savings are based on FY2017 cost per student to transport to nonpublic placement.

Conclusion

In any given year, the volume of legal services initiated by the HCPSS are predicted based on history and proposed new initiatives. The volume of legal services necessary in response to matters initiated externally by HCPSS stakeholders can vary significantly from year to year. In FY 2016 there was a huge increase in the number of MPIA cases, along with a marked decrease in the number of special education cases. As noted above, in FY 2014 about 38 percent of legal expenses were for special education cases, dropping to 29 percent in FY 2015. In FY 2016 there were far fewer special education cases initiated by HCPSS stakeholders, and the special education legal expenses dropped to about 14 percent of the total legal expenses. Additionally, the overall cost of FY 2016 non-special education legal services also dropped from FY 2015. Again, many of the non-special education legal services are required in response to matters brought to the HCPSS, rather than cases initiated by the HCPSS. The variability in actual experience is factored into each annual budget projection.

This cost analysis shows that the transition to the expert legal services model did not result in higher legal costs for the school system, as a percentage of the operating budget, nor for enrollment growth. HCPSS, similar to other large, growing metropolitan Maryland school districts, has experienced some rising legal costs, in proportion with the growth in its budget. These legal costs would likely be rising under either the in-house legal model or expert legal model.

The expert services legal model has resulted in greater savings in the form of current and future avoided costs and an overall decrease in total legal expenses from the in-house counsel model. The review of the cost and effectiveness of the current expert services legal model supports continuation of this approach by the Board.